

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, )  
                                  )  
                                 Plaintiff, )                         8:09CR48  
                                  )  
                                  )  
                                 v. )  
                                  )  
                                  )  
ROY LENOS-PAZ, )                         ORDER  
                                  )  
                                  )  
                                 Defendant. )  
                                  )  
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This matter is before the Court on defendant's petition/motion for sentence consideration and reduction (Filing No. [167](#)), and the response of the government to the motion (Filing No. [170](#)). On May 28, 2009, the defendant entered a plea of guilty to Count I of the indictment returned by the Grand Jury. That count charged that "from an unknown date but at least as early as January 1, 2008, up to and including January 22, 2009, the defendant" conspired with others to distribute and possess with intent to distribute more than 500 grams of a mixture or substance containing cocaine.

Pursuant to Title 21, U.S.C. § 841(b)(1)(B), this charge carries a mandatory minimum sentence of five years. On August 13, 2009, the defendant appeared for sentence and was sentenced to a term of imprisonment of sixty months. The defendant had previously entered into a plea agreement with the government which provided that he be held responsible for more than two kilograms but less than 3.5 kilograms of cocaine and be

sentenced to a term of imprisonment of sixty months. The Court's sentence adopted that provision of the parties' plea agreement.

The defendant now seeks a reduction of his sentence pursuant to the recent modifications to the guideline sentences for crack cocaine. However, Congress has not modified 21 U.S.C. § 1841. Accordingly, any modifications to the guidelines cannot result in defendant receiving a sentence of less than sixty months. In addition, the modifications to which defendant made reference are not retroactive. For these reasons,

IT IS ORDERED that defendant's petition/motion for sentence consideration and reduction is denied.

DATED this 11th day of January, 2011.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court